IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

MFA.No. 1348 of 2001()

OPMV.803/1991 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT: PETITIONER

T.C.JOSEPH, S/O.CHACKO, THAZHATHIL HOUSE,
CHIRATTAKADAVU ROAD, THALAYOLAPARAMBU,
VADAYAR, VAIKOM , KOTTAYAM.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENTS: RESPONDENTS
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1. K.K.MOHANDAS, S/O. KESAVAN,
ASARIPARAMBIL HOUSE, KURAVILANGAD P.O.,
KURAVILANGAD VILLAGE, MEENACHIL TALUK.

2. ABUBAKER, S/O.KANIYAPPA RAWTHER,
VADAYAR VILLAGE, THALAYOLAPARAMBU KARA,
NOW RESIDING AT PUTHIYA MALIKA VEETIL,
(UNNIKRISHNA LODGE),
VELLOOR KARA, VAIKOM.

3. THE ORIENTAL INSURANCE CO. LTD.,
KOTTAYAM.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA) - R3
SRI.P.RAVINDRA BABU - R2
SRI.K.V.GOPINATHAN NAIR - R1

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.1348 OF 2001

Dated 6th July, 2007

JUDGMENT

Koshy,J.

Appellant/petitioner while riding his bicycle was hit by a Tipper lorry bearing registration No.KLU 4865 and sustained serious injuries. He claimed a compensation of Rs.36,39,170/= contending that the accident occurred due to the negligence of the driver of the Tipper lorry insured by the third respondent insurance company. The Tribunal awarded a compensation of Rs.5,30,950/= with 12% interest from the date of application till deposit. It is argued by the appellant that he was employed in Saudi Arabia as Electrical Engineer and getting 3960 Saudi Riyals corresponding to Rs.19,800/= per month with free accommodation, food and domestic services. He came on leave for three months as seen from the passport produced. Then he applied for extension of leave and by Ext.A18 leave was extended by one month. It is the case that during that period the accident occurred. He had head injury and treated for multiple injuries. Ext.A25 is the medical certificate issued by Dr.Pushkala in which it is stated that the appellant was admitted in the Medical College Hospital, Kottayam with multiple injuries and head injury sustained in a motor traffic accident. He had fracture of

right zygoma and right maxilla. He was treated conservatively for diffuse cerebral injury. C.T.Scan of head showed multiple fractures. E.N.T. consultation was done and he is continuing follow up under close observation and he has amnesia even at present. There is visual disability of 75% to right eye and 25% to left eye and total disability is 40%. Dr.Pushkala as PW2 deposed that appellant has 25% disability. The Tribunal has taken 25% disability for assessing compensation. According to the appellant, he lost employment in Saudi Arabia because of the disability and he was again called by the Company, but, he was not able to go because of the serious injuries concerned. Therefore, his case is that compensation should be granted for 100% disability. The Tribunal has correctly stated that 25% is the disability. The Tribunal has granted Rs.50,000/= towards loss of earnings taking Rs.12,500/- per month during the period under treatment considering his foreign earnings, but, for calculating compensation for permanent disability only Rs.5,000/= was taken as monthly income. The Tribunal was of the view that after the period of treatment even if he would not be able to go back to Saudi Arabia, he could have done some work in India. Even though he was not a degree holder, if he was an Electrical Engineer, he can do technical work in India. The fact that he refused to do work is not a ground for granting compensation for 100% disability. Taking

Rs.5,000/= as monthly income and 15 as the multiplier (appellant was aged 37) the Tribunal granted Rs.2,25,000/= for disability and an equal amount was granted for loss of earning capacity also. A Full Bench of this court held that compensation for disability and loss of earning capacity cannot be granted separately. Compensation has to be granted for loss of earning power due to disability. Since compensation was granted separately under these items, it is equivalent to taking Rs.10,000/= as monthly income. The total amount granted was Rs.5,30,950/= with 12% interest. If the amount is deposited in bank also he can earn sufficient monthly income. The claim petition was filed in 1991 and award was passed in 2000 only. So, he has received huge amount as interest. Considering that and also considering the facts and circumstances of the case, we are of the opinion that just and reasonable compensation was granted and no further enhancement is necessary.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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